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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GARY BERNSTEIN,

Plaintiff,

vs.

BLAKE REIDHEAD INC dba BDR
TRANSPORT; STEVEN THOMAS WEST;
DOES I through XX, inclusive; and ROE
BUSINESS ENTITIES I through XX,
inclusive,

Defendants.

CASE NO. 2:21-cv-00246-JAD-VCF

**STIPULATION AND ORDER TO
EXTEND DEADLINE TO RESPOND TO
DEFENDANTS' MOTION TO DISMISS
CERTAIN CLAIMS**

ECF No. 26

The above-named parties, by and through their respective, undersigned counsel of record, hereby stipulate to a two-week extension of time for Plaintiff to respond to Defendants' Blake Reidhead, Inc. dba BDR Transport and Steven Thomas West's Motion to Dismiss Certain Claims Per Rule 37(b)(2)(A).

REASONS FOR REQUESTED EXTENSION

The parties herein stipulate to reopen and extend the deadline for Plaintiff to respond to Defendants' Motion to Dismiss Certain Claims Per Rule 37(b)(2)(A). (ECF No. 22). This extension is being sought for two purposes, as described below. As also demonstrated, there exists good cause and excusable neglect justifying the date of submission of this stipulation.



1 First, both of Plaintiff's above-listed attorneys (Messrs. Ladah and Chu) are currently
2 amidst a 15-day jury trial in Department 8 of the Eighth Judicial District Court, *Redekop v.*
3 *Palmer, et al.*, Case No. A-18-786061-C. For this reason, Defendants' counsel graciously agreed
4 to extend the deadline for Plaintiff's response to their above-referenced motion.

5 Second, on June 15, 2022, Plaintiff's counsel obtained a copy of an April 19, 2022
6 treatment record generated by Plaintiff's primary care physician, Kathleen Cansler, M.D., a copy
7 of which is attached hereto as Exhibit "1". April 19, 2022 was also the date scheduled for
8 Plaintiff's Rule 35 neuropsychologic examination with Dr. Staci Ross (ECF No. 21), and
9 Plaintiff's failure to appear for the same is the subject of Defendants' aforesaid motion. This
10 treatment record shows that Plaintiff presented to Dr. Cansler's office at 9:55 a.m., with a fever,
11 headache and runny nose. (Ex. 1). Accordingly, a specimen was taken that same day and
12 submitted for testing, which confirmed a positive finding of Covid-19. *Id.* In short, Plaintiff did
13 not appear for his April 19, 2022 Rule 35 examination with Dr. Ross because of flu-like
14 symptoms secondary to Covid-19.

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16
17 Party counsel has preliminary met and conferred about the impact of Dr. Cansler's April
18 19, 2022 treatment note on Defendants' pending motion (insofar as it provides, from Plaintiff's
19 perspective, ample justification for Plaintiff's failure to appear for his Rule 35 examination).
20 However, further discussions on this issue have not progressed due to Plaintiff's counsel's
21 engagement in the aforementioned jury trial. Party counsel intends to resume these discussions,
22 however, on or before July 1, 2022. In the event these discussions do not yield an alternate
23 solution, the two-week extension of time sought herein leaves sufficient time for Plaintiff to file
24 a response to Defendants' motion.

25
26 The parties submit that the foregoing statements constitute good cause for the extension
27 of time requested herein. Further, Plaintiff's counsel respectfully submits that the failure to
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submit this stipulation prior to the deadline to oppose respond to Plaintiff's motion is the produce of excusable neglect, and should not prevent the Court's approval of the stipulated terms. Plaintiff's undersigned counsel mis-calendared Plaintiff's response deadline by one day (to Monday, June 20, 2022, rather than Friday, June 17, 2022). As counsel is currently in trial (and will be for at least another week), this mistake was not noticed until the evening of the June 17, 2022. It bears emphasizing, however, that Plaintiff's counsel had discussed Plaintiff's intention to stipulate to extend the briefing deadlines approximately one week earlier, such that the parties had ample notice of this (proposed) extension. Nevertheless, Plaintiff's undersigned counsel apologizes for not submitting this stipulation prior to the response brief deadline.

Accordingly, for the above reasons, the parties hereby stipulate and agree to extend the deadline for Plaintiff to respond to Defendants' Motion to Dismiss Certain Claims Per Rule 37(b)(2)(A) to **July 8, 2022**. (ECF No. 22).

The parties enter this stipulation in good faith, and not for reasons of delay or any other untoward purpose.

DATED this 19th day of June, 2022.

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/s/ Joseph C. Chu, Esq.

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DATED this 19th day of June, 2022.

WILSON ELSEER

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ORDER

IT IS SO ORDERED.


UNITED STATES DISTRICT COURT JUDGE